



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 5411-99
15 February 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 27 June 1974 at the age of 17. Your record shows that you on 9 September 1974 you received nonjudicial punishment (NJP) for assault. The punishment imposed was restriction for four days and forfeitures totalling \$70.

Your record also reflects that during the period from 17 January to 20 December 1975 you received NJP on five occasions for four periods of unauthorized absence (UA) totalling 18 days and two periods of absence from your appointed place of duty.

On 30 August and again on 1 October 1976 you received NJP for absence from your appointed place of duty and breaking restriction. You were also counselled on two occasions for indebtedness, unsatisfactory performance, and repeated disciplinary infractions.

Your record further reflects that on 28 January 1977 you were convicted by summary court-martial (SCM) of three periods of UA totalling 56 days. You were sentenced to confinement at hard

labor for 30 days and restriction for 30 days. Shortly thereafter, on 10 February 1977, you received NJP for a three day period of UA and were awarded forfeitures totalling \$125.

Subsequently, on 5 July 1977, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for three periods of UA totalling 60 days. Your record shows that prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was subsequently granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 15 July 1977 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, and your contention that you would like your discharge upgraded. The Board further considered your contentions that you were not fully coherent and under the influence of mind and/or mood altering substances, and that you signed your discharge documents while under duress. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the serious nature of your frequent and lengthy periods of UA and your request for discharge to avoid trial for these offenses. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director